

# Penalty

## Regime

This factsheet is designed to give an overview of the penalty regime that applies to the various taxes (PAYE, VAT, Corporation Tax and Personal Tax).

### Inaccurate Return Penalties

In April 2009 HMRC brought into effect legislation regarding penalties affecting any return submitted after 1st April 2009 for a period commencing 1st April 2008. Thus, it covers 2008/09 personal tax returns and PAYE yearend returns as well as Corporation Tax and VAT returns submitted after this date.

To be liable to a penalty you must do one of the following:

- 1) Submit a return to HMRC that contains an inaccuracy or
- 2) Accept an assessment from HMRC knowing it is insufficiently low.

If you are liable to a penalty then, depending on how the error occurred, will determine the level of penalty applied based on the table below:

Nature of offence	Max %	Min Unprompted	Min Prompted
Reasonable Care	0%	0%	0%
Careless Action	30%	0%	15%
Deliberate no concealment	70%	20%	35%
Deliberate with concealment	100%	35%	50%

Based on this table you will see that if reasonable care has been taken then no penalty will be levied. You will also see the benefit of making a full unprompted disclosure in the event of an error as the potential penalties can be much lower.

### How are each of these behaviours determined?

**Reasonable Care** - This is not defined in legislation but would be any minor omission that was not classed as careless. For example, a simple arithmetic or transposition error should fall under this category. Reasonable care should be considered in context of the situation of the taxpayer.

**Careless** - This is defined as 'failure to take reasonable care' although reasonable care is not defined in legislation HMRC considers that the definition of 'careless' equates to that of "negligence" which is defined in case law as:

*"The omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or something which a prudent and reasonable man would not do. The defendants might be liable for negligence, if, unintentionally, they omitted to do that which a reasonable person would have done, or did that which a person taking reasonable precautions would have done."*

HMRC expect that, if a taxpayer comes across something different or unusual in their own tax affairs which gives them uncertainty on the tax consequences, they would seek advice from an advisor or HMRC directly and if this is not done they would look to enforce a penalty as 'careless' because the actions are not those of a 'reasonable person'.



**Deliberate no concealment** - This is where a person knowingly and intentionally gives HMRC an inaccurate document but they have not taken active steps to hide the inaccuracy. Examples would be:

- Paying wages without operating PAYE
- Knowingly missing off sales from the records i.e. doing jobs for 'cash'
- Deliberately undervaluing stock or work in progress at the yearend
- Deliberately withdrawing money from an incorporated business to use personally whilst making no attempt to make sure it is taxed correctly.

It is the last example that greatest attention should be paid to i.e. director's loans not being declared on P11d's. This is an area that HMRC are believed to be cracking down on so if you have ever had an overdrawn director's account in excess of £5,000 you must ensure this is declared on a P11d each year.

**Deliberate with concealment** - This is obviously the most serious offence. It occurs when a tax payer gives a document to HMRC knowing it has errors in it and takes steps to ensure these errors are not discovered by HMRC. This might involve creating fictitious records, meetings notes or deliberately destroying records to cover up errors.

### How will the penalty be calculated?

HMRC will firstly calculate the Potential Lost Revenue (PLR) which broadly speaking is the revenue that would have been lost as a result of the offence or inaccuracy. Once the PLR has been calculated the HMRC will allocate the inaccuracy to one of the four categories above and apply the maximum penalty for that category.

This penalty can be mitigated down as the law allows HMRC to reduce the penalty (although not below the minimum as per the above table) based on how the taxpayer has dealt with the investigation as follows:

- How they told HMRC about the error (30%)
- How they helped HMRC understand the error (40%)
- How they gave HMRC access to records (30%).

The percentage figure shown is the maximum amount the penalty can be mitigated down by between the maximum and minimum penalties that can be levied.

### Late payment of taxes

If you pay any tax late, then interest will be applied to the outstanding amounts by HMRC. This is normally at HMRC's standard rates for the various taxes; however, additional surcharges may apply for unpaid tax that is over 30 days at variable rates depending on the tax that is late.

### Late submission of returns

If you are late in submitting a return to HMRC you may face a penalty, this will depend on the return that is late and the length of time past the normal submission date that the return is filed. Below is a general guide to the penalties that would apply to late returns.



## Abbreviated Accounts submitted late to Companies House

The penalty due for a late submission will be as follows, based on how late the accounts are submitted,

- Not more than one month late - £150
- More than one month and less than three - £375
- More than three months and less than six - £750 and
- More than six months - £1500.

These are doubled if the accounts were submitted late the previous year.

## Corporation Tax

Late submission of your Corporation Tax return form (CT600) to HMRC will result in a £100 penalty being levied every 6 months. Penalties may however be higher than this for continuous non-compliance.

## VAT

Penalties on the late submission of VAT returns depend on the level of annual turnover as detailed below:

Penalties	Annual Turnover less than £150,000	Annual Turnover greater than £150,000
1st late return	Help Letter issued	Warning letter
2nd late return	Warning Letter	2% of VAT due
3rd late return	2% of VAT due	5% of VAT due
4th late return	5% of VAT due	10% of VAT due
5th late return	10% of VAT due	15% of VAT due
6th and subsequent late returns	15% of VAT due	15% of VAT due

This is operated on a 1 year rolling basis; in order to escape the VAT surcharge period 4 consecutive returns/payments must be made on time.

We would recommend that you set up a direct debit with HMRC, so that they can automatically collect the VAT payment, paying by direct debit also gives you an extra 7 days to pay.

## PAYE

Return	Penalty
P35/P14	£100/month
P11d (b)	£100/month

Any penalty levied in respect of these returns cannot exceed the amount of tax due for the relevant tax year, subject to a minimum of £100.

Any penalties/late payment interest that falls due over an accounting period will not be treated as an allowable deduction when calculating your corporation tax charge for the year.

## Self Assessment Tax Return

- One day late - £100
- Over 3 months late - Daily penalties of £10 per day (maximum of 90 days)
- Between 6 months but less than 12 months - 5% of the tax due
- Greater than 12 months late - This is dependent on why the return is late but the penalty can be up to 100% of the tax due.

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